

## REMARKS

Presently claims 1 to 9 and 11-13 have been rejected for the reasons noted in the office action dated 8/11/2006. Claim 10 has been previously been canceled. Independent claims 1 and 6 have been amended to more carefully reflect the nature of the leaking oligimode fiber/waveguide and claims 3-5, 7-8 and 11-14 have been amended to reflect changes in the amended independent claims.

Some general comments about the amendments follow.

In response to the examiner's concerns about power leaking out a distal end being covered by "...to selectively leak irradiation ...from at least one preselected position along a length of said waveguide..", we have restricted the base claims to the commercially interesting "multiple positions along a length of said waveguide, independent of emission from a distal end," which defines "a laterally leaking fiber". The most valuable cases, as exemplified in specification, are truly these, i.e. where one oligimode fiber can be used to activate/treat a series of plants, seeds, wounds, etc.

In response to the concerns about "comprising" in claim 1 allowing inclusion of significant items not enumerated, we have chosen to restrict claim 1 to "consisting substantially of" to denote that the listing is essentially exclusive of all but a minor addition or two.

Lastly, this practitioner and applicants wish to point out that it was they who brought Dabby to the examiner's attention in the prosecution of the original docket in order to educate the examiner as to "oligimode" optical fibers and their use in telecom and data transfer applications. Having also known the inventor personally the intent and disclosure made in this patent are also well known to us. By his own prior art searches, examiner did not find or connect Dabby's work to medical fiber optic applications. It was only applicant's knowledge and a need to educate examiner as to the fact that the term "oligimode fiber" was indeed, a term 'known in the art of Fiber Optics', that revealed this to the examiner. Applicants had discovered this in their development of

general products in the industrial and governmental fields and indeed it is part of the novel connections made by applicants in developing this invention which now examiner chooses to hold out his own. No other work or patent, prior to this invention, has made connections between Dabby's work and medical fiber optics applications.

### **35 U.S.C. 103(a) REJECTIONS:**

1. Claims 1, 3, 4, 6, 8 and 9 are rejected under 35 U.S.C. §103(a) as being unpatentable over McDaniel in combination with Dabby.

Prior traverses are incorporated by reference.

With the amendments to the base claims, claim 1 and claim 6, to more specifically indicate that light emitting from a distal end is not adequate to qualify as “ a laterally leaking optical fiber”, examiner's comments and concerns have been addressed. The restricted and better defined claims are not obvious from either McDaniel, nor Dabby nor their combination. They should thus be in allowable form.

2. Claims 2, 5 and 7 are rejected under 35 U.S.C. §103(a) as being unpatentable over McDaniel in combination with Dabby, and further in combination with Mori.

Prior traverses are incorporated by reference.

With the amendments to base claims and the dependent claims identified here, and in light of limitations of Mori, described earlier, the present claims are even more significantly different from the teachings of Mori in light of the teachings of McDaniel and Dabby.

3. Claim 11 is rejected under 35 U.S.C. §103(a) as being unpatentable over McDaniel in combination with Dabby and Prescott.

The prior traverses are incorporated by reference.

In claim 11, the optical fiber is placed on the wound before it is covered and both the wound and the fiber are covered by the dressing. None of the references disclose this procedure either singly or in combination. In particular, Prescott adds only the use of

multiple sources in direct contact with the wound area. It requires the use of multiple 'cheap' sources in his silicone bandage approach. There is no reason why one reading this would be lead to one source combined with a laterally leaking optical fiber. Actually the point of Prescott is that there is no need for delivery means such as optical waveguides or fibers. His sources encased in silicone or similar insulator are cheap enough to directly treat/irradiate a wound, without in his mind the need for delivery media. Thus Prescott adds a bandage approach, but for distributed sources not fibers. But it is the use of the leaky fibers with multiple positions along its length for the light to "leak out" and treat the wound area that is the essence of the present invention as now more concisely claimed. This not made obvious by any combination of prior art especially since the independent claim is not made obvious by them.

5. Claim 13 is rejected under 35 U.S.C. §103(a) as being unpatentable over McDaniel in combination with Dabby and further in combination with Sullivan.

The prior traverse is incorporated by reference.

The McDaniel reference indicates the use of optical fibers to guide the radiation emitted from a plurality of LEDs to a light directing source. These optical fibers do not have leakage as shown in the present invention and are not placed in or near the treated tissue, seeds, organisms, etc. Sullivan merely discloses the use of multiple LEDs sources to treat animals such as humans at a distance and mounted in plates, disks, or other holding devices. There is no teaching therein for inputting the LED light into optical fibers having multiple leaking positions and the placement of these in or near animals. Sullivan uses LEDs without optical fibers. In fact McDaniel and Sullivan present alternate, competing methods of providing wound healing and there really is no reason to combine them and taken together they do not disclose or imply that the specific device and method of biostimulation of the present invention could be arrived at without extreme experimentation if one was not already informed by reading the present invention.

It is therefore asserted that claim 13 is patentable over this combination.

The adjustments to make claim 14 consistent with the base claims, have not altered its allowability, thus require no further comment.

The amended claim set has clearly shown non-obviousness over the prior art. The use of Dabby by the examiner in the same invention that applicants are the first to see an possible use in medical applications, should not be used in an obviousness test, as the examiner in all initial searches did not come upon this reference did not find this reference. In fact no other prior art reference in medical applications of lasers and optical fibers has ever drawn any value from the Dabby disclosure before us.

With these changes and remarks it is believed that the disclosure is now in condition for allowance. Reconsideration is respectfully requested. An early and favorable response is earnestly solicited. Thank you.

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